

LICENSE AGREEMENT FOR UTILITY SPACE AND APPURTENANCES

Agreement made this 17TH day of SEPTEMBER, 2010 between the **City of Lincoln, Nebraska, a municipal corporation**, hereinafter "City" and **Black Hills Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy**, hereinafter "Black Hills".

1. Description of Premises. City grants to Black Hills a license to occupy and use a certain parcel of real property situated thereon, located at Schroeder/Willard Park, Lincoln, NE, County of Lancaster (the associated ROW and real property are, collectively, the "Property", and the specific portions of the Property occupied by Black Hills exclusively are the "Premises"), all as shown on the attached Exhibit A which is incorporated herein by this reference.

2. Term of Agreement. The term of this License will be for twenty five years, and will commence upon execution of this Agreement by both parties (the "Commencement Date").

The parties agree that this License is irrevocable until this Agreement expires or terminates as provided herein.

3. Use of Premises. The Premises will be used for the purpose of installing, constructing, maintaining, repairing, operating, altering, inspecting, expanding, adding to and removing Black Hills's gas utility equipment, including, but not limited to, the following:

- a. Gas regulating Station
- b. Distribution lines and associated appurtenances.
- c. One graveled pad within a fenced compound ("Utility Compound") containing, without limitation, gas regulating equipment and shall be of a design and construction as approved by the Parks Department.
- d. Black Hills shall have 24-hour 7 day a week access to the Premises. City shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow vehicular and pedestrian access at all times and to permit Black Hills to operate, maintain and repair the Utility Facility.

For the purposes of this License, all of Black Hills's equipment and necessary appurtenances will be referred to herein collectively as the "Utility Facility."

Black Hills shall submit the building plans to City who shall have fifteen (15) calendar days to accept or reject such plans and deliver such notice to Black Hills in writing. Should the City fail to respond in writing to Black Hills within such fifteen (15) day period, such plans shall be deemed approved. As soon as reasonably possible after City approves the building plans, Black Hills shall construct and install, at Black Hills's cost, the Utility Facility at the location depicted on Exhibit A, in accordance with the approved plans and specifications shown on Exhibit B. The Utility Facility may be installed by Black Hills or by any of Black Hills's

agents or contractors. Black Hills may make alterations to the Utility Facility from time to time as Black Hills determines to be necessary or desirable, subject to the approval process described above, which approval will not be unreasonably withheld.

Any damage to the Premises caused by the construction, operation and maintenance of the Utility Facility shall be at Black Hills's sole expense.

All work to be performed on the Premises shall be performed in a good and workmanlike manner, and in accordance with all applicable governmental laws, ordinances, regulations and codes. Black Hills shall obtain all permits necessary for such construction. Any contractor performing work on the Premises shall furnish a payment bond, with corporate surety licensed to do business in the State of Nebraska, in the full amount of the cost of such improvements, showing City as the beneficiary thereon. All such contractors shall carry statutory worker's compensation insurance and liability insurance with limits of not less than One Million Dollars (\$1,000,000).

4. Other Licenses and Permits. Black Hills shall secure from the proper governmental authorities all licenses and permits required by law for the construction, maintenance and operation of the structures and appurtenances before construction of the Utility Facility.

5. Fees. Black Hills shall pay to City a license fee to occupy and use the Premises ("License Fee"). The License Fee shall be \$200/year, payable upon the execution of this agreement. The License Fee shall be increased by 10% every five years.

City of Lincoln
Parks and Recreation Department
2740 A Street
Lincoln, NE, 68502

6. Access to City Property. It is acknowledged that the Utility Facility and appurtenances thereto are constructed on City property which is a vital part of City's operations. Black Hills shall operate their equipment on the licensed Premises in such a manner so that the operation does not interfere with City's current operations on its property nor will it interfere with access to the property by City personnel, agents or contractors. Black Hills agrees to comply with any reasonable rules, regulations, and procedures that may be adopted by City from time to time to provide reasonable security measures to protect the Premises and City. City retains the right to use the Property at any time in connection with the need of City to provide benefits to the public. City will endeavor to do so in such a manner so as to not interfere with Black Hills's use of the Premises. City retains the right to use the Property in any ways that do not interfere with Black Hills's uses.

7. Taxes. Since the real property is owned and used by a governmental entity (City), it is potentially tax exempt. Black Hills shall be responsible for and pay all taxes that shall accrue thereon, as an additional license fee, if taxes are subsequently levied against the Utility Facility. Black Hills will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its possession or use of the Utility Facility or

Premises. Black Hills shall have the right, at its sole option, and at its sole cost and expense, to appeal, challenge or seek modification of any personal property tax assessment or billing for which Lessee is wholly or partly responsible for payment under this Agreement.

8. Payment of Utilities. Black Hills shall have the right to draw telco, electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Premises (including a standby power generator for Black Hills's exclusive use). Black Hills shall fully and promptly pay for all utility service of every kind furnished to the licensed Premises throughout the license term. City shall not be liable for any damage to equipment or loss of revenue to Black Hills resulting from the interruption of utility services unless due to the negligent or intentional acts of City. All fees due under this Agreement shall continue notwithstanding any interruption of power or other required utility facilities, except for the willful act or negligence of City.

9. Maintenance of Licensed Premises. Black Hills shall, throughout the term of this license, at its own cost and expense, keep and maintain the Utility Facility and all appurtenances thereto including all constructed improvements in good, sanitary, lawful and neat order, condition and repair, excluding any of City's property and equipment from the licensed Premises. The City may require the Utility Facility to be screened with landscaping. Any landscaping of the Premises, required as a result of the installation of Black Hills's Facilities, required by the City of Lincoln or any other appropriate governmental authority shall be done at the sole cost and expense of Black Hills, including all necessary maintenance. Neither Black Hills nor any other party shall be allowed to display any signage or advertisement on the Utility Facility, on any structure within the Premises or anywhere on the Premises, except as required by law. Black Hills shall take all reasonable necessary measures and precautions to prevent unauthorized persons access to the Premises.

10. Liability. City shall not be liable for damage to Black Hills's improvements or for any loss or damage to any vehicles parked upon the licensed Premises, except for the negligent or willful act of City. Black Hills shall at all times during the term of this license keep in full force and effect, a commercial general liability policy with Three Million Dollars (\$3,000,000.00) combined single limit coverage for bodily injury and property damage, naming City as an additional insured on such policy. The City may adjust the required amounts of such insurance during the term of the agreement in conjunction with changes in the amounts recoverable under state law but in no event in an amount greater than five million dollars (\$5,000,000.00) without the agreement of Black Hills. Black Hills shall furnish City with a certificate of such insurance policy which shall provide such insurance policy shall not be canceled without first having given City thirty (30) days written notice of such cancellation.

11. Indemnification. To the fullest extent permitted by law, the Black Hills shall indemnify and Hold Harmless the City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the Black Hills's use and occupation of the Premises, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by Black Hills or anyone directly or indirectly employed by Black Hills, or anyone for whose acts any of them may be liable. This

section shall not require Black Hills to indemnify or Hold Harmless the City for any losses, Claims, damages, and expenses arising out of or resulting from the negligence of the City. The City shall indemnify and hold Black Hills harmless, to the extent allowed by Nebraska Law, from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the City. Nothing in this Article shall require either party to indemnify the other party against such other party's own willful or negligent misconduct.

12. Assignment, Renting or Leasing Space. Black Hills shall have the right to sublicense or assign its rights under this License to any party affiliated, under common control or otherwise related to Black Hills, successor legal entities or any party acquiring substantially all the assets of Black Hills (the "Control Group") without the consent of City. Notwithstanding anything to the contrary contained in this Agreement, Black Hills may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Black Hills (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

13. Events of Default. Default shall occur if any one or more of the following events shall happen:

a. Black Hills shall default in the punctual payment of the license fee and such default shall continue for thirty (30) days after receipt of written notice from City; or

b. If either party shall neglect or fail to perform or observe any of the material provisions of this License Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from the other party, the other party may, at its option, 1) cure the failure at the defaulting party's expense, or 2) terminate this License. If any such default cannot reasonably be cured within thirty (30) days, the defaulting party will not be deemed to be in default under this License if it commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion.

14. Environmental Laws. Black Hills warrants and agrees that it will conduct its activities on the property in compliance with all applicable environmental laws. City represents, warrants and agrees that it has in the past and will in the future conduct its activities on the property in compliance with all applicable environmental laws and that the property is free of hazardous substance as of the date of this Agreement.

City shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable law, of all spills or other releases of hazardous substance, that have occurred or which may occur on the property caused or attributable to the actions of the City. To the extent permitted by Nebraska law, City agrees to defend, indemnify and hold Black Hills harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorneys fees that Black Hills may suffer due to the existence or discovery of any hazardous substance on the property or the migration of any hazardous substance to other properties or release into the environment arising not otherwise directly attributable to Black

Hills's activities on the Premises; and/or arising from any breach of any representation, warranty or agreement contained in this paragraph.

Black Hills agrees to defend, indemnify and hold City harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorneys fees that City may suffer due to the existence or discovery of any hazardous substance on the property or the migration of any hazardous substance to other properties or release into the environment directly attributable to Black Hills's activities on the property.

The indemnification in this section specifically include without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

15. Nebraska Law. This license shall be construed and enforced in accordance with the laws of the State of Nebraska and any legal action brought in respect thereto shall be brought either in the state courts of the State of Nebraska located in Lincoln, Nebraska, or if applicable, in the United States District Court located in Lincoln, Nebraska.

16. Binding Effect. This Agreement shall inure to the benefit and be binding upon Black Hills, its successors or assigns.

17. Interference. Black Hills shall at all times pertinent hereto be responsible for the proper operation of its equipment located on the Premises and shall make certain that the same complies with all pertinent laws, rules and regulations of any applicable governmental authority. In the event that Black Hills's equipment causes measurable interference with any of City's equipment or to any facilities of a third party including the public that existed prior to the date of this Agreement, Black Hills, upon notice received of the measurable interference, shall take all reasonable steps necessary to correct and eliminate the interference as soon as possible and shall take all necessary precautions and corrective action needed to prevent the reoccurrence of the interference.

18. Additional Licenses. Black Hills acknowledges the right and authority of City to grant and lease or license additional licenses for telecommunication or utility equipment and appurtenances thereto of other users on the City's property so long as such grant and lease or license does not interfere with Black Hills's use of the Premises.

19. Entire License Agreement. This license contains the entire understanding of the parties hereto with respect to the conditions of this license and supersedes all prior agreements and understandings between the parties with respect to such subject matter. The representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this license agreement or unless mutually agreed to in writing between the parties hereto after the date hereto, and neither party has relied on any verbal representation, agreements, or undertakings not expressly set forth herein.

20. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier, to the following addresses:

City: City of Lincoln
City Parks and Recreation
2740 A Street
Lincoln, NE, 68502

Black Hills: Black Hills Energy
1600 Windhoek Drive
Lincoln, NE 68512

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

21. Contingencies. This License Agreement and Black Hills's obligations hereunder are expressly contingent upon the following:

- a. Black Hills's satisfaction with the status of title to the Premises.; and
- b. Black Hills's satisfaction, within the first year of the agreement, in its sole and absolute discretion, with the feasibility of engineering, installing, constructing and operating the Utility Facility; and Black Hills's receipt of all necessary or appropriate building and construction permits and all licenses, permits, approvals and consents from all applicable governmental authorities necessary or appropriate for Black Hills to use and operate the Utility Facility on the Premise.

Black Hills is hereby given the right to survey, soil test, radio coverage test, and to conduct any other investigations needed to determine if the location of the Premises are suitable for Black Hills's use intended by this License.

22. Termination. In addition to other rights to terminate contained herein, Black Hills may terminate this License Agreement at any time by notice to City without further liability if:

- a. Black Hills does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority or any easements required from any third party to operate the Utility Facility, or if any such approval is canceled, expires or is withdrawn or terminated by the governmental authority; or
- b. City fails to have proper ownership of the Premises or authority to enter into this License Agreement; or
- c. Black Hills is no longer able to operate the Utility Facility due to an action by a governmental entity.

Upon termination, all prepaid rent will be retained by City unless such termination is due to City's failure of proper ownership or authority, or such termination is a result of City's default. Additionally, upon termination or non-renewal Black Hills must remove its equipment within ninety (90) days after the expiration of this Agreement. Failure to so remove the equipment will, at the City's option, 1) result in the same being owned by City; or 2) result in the same being removed by the City at Black Hills's cost.

23. Waiver of City's Lien. City waives any lien rights it may have concerning the Utility Facility which is deemed Black Hills's personal property and not fixtures, and Black Hills has the right to remove the same at any time without City's consent.

24. Miscellaneous. (a) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law; (b) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. (c) City acknowledges that a Memorandum of Agreement may be recorded by Black Hills in the official records of the County where the Property is located. City agrees to sign all necessary and appropriate documents to facilitate the filing of the Memorandum of Agreement. In the event the Property is encumbered by a mortgage or deed of trust, City agrees to obtain and furnish to Black Hills a non-disturbance and attornment instrument for each such mortgage or deed of trust; (d) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent; (e) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this license agreement the day and year first above written.

CITY OF LINCOLN, NEBRASKA

By: _____
Mayor Chris Beutler

Black Hills Nebraska Gas Utility Company, LLC, d/b/a Black Hills

By: Don Nordell

Name: Don Nordell
Title: Director, Business Operations

Date: September 17, 2010

ACKNOWLEDGMENTS

STATE OF NEBRASKA)

COUNTY OF LANCASTER)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Chris Beutler, as Mayor for the City of Lincoln, known to me to be the same person whose name is subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that, pursuant to her authority, he signed the said Agreement as his free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 2006.

Notary Public

My commission expires _____

STATE OF)

COUNTY OF)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that DON NORDEN known to me to be the same person whose name is subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that, pursuant to his/her authority, he/she signed the said Agreement as her free and voluntary act on behalf of the named corporation, for the uses and purposes therein stated.

Given under my hand and seal this 17th day of September, 2008.

Becky Ferrill
Notary Public

My commission expires Dec 2, 2013

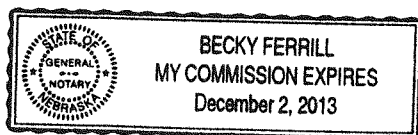


EXHIBIT A

PREMISES:

Black Hills Survey and legal



Official Survey Record

LANCASTER County, Nebraska

ALLIED SURVEYING AND MAPPING, INC.
6120 South 58th Street - Suite "A" - Lincoln, Nebraska 68516

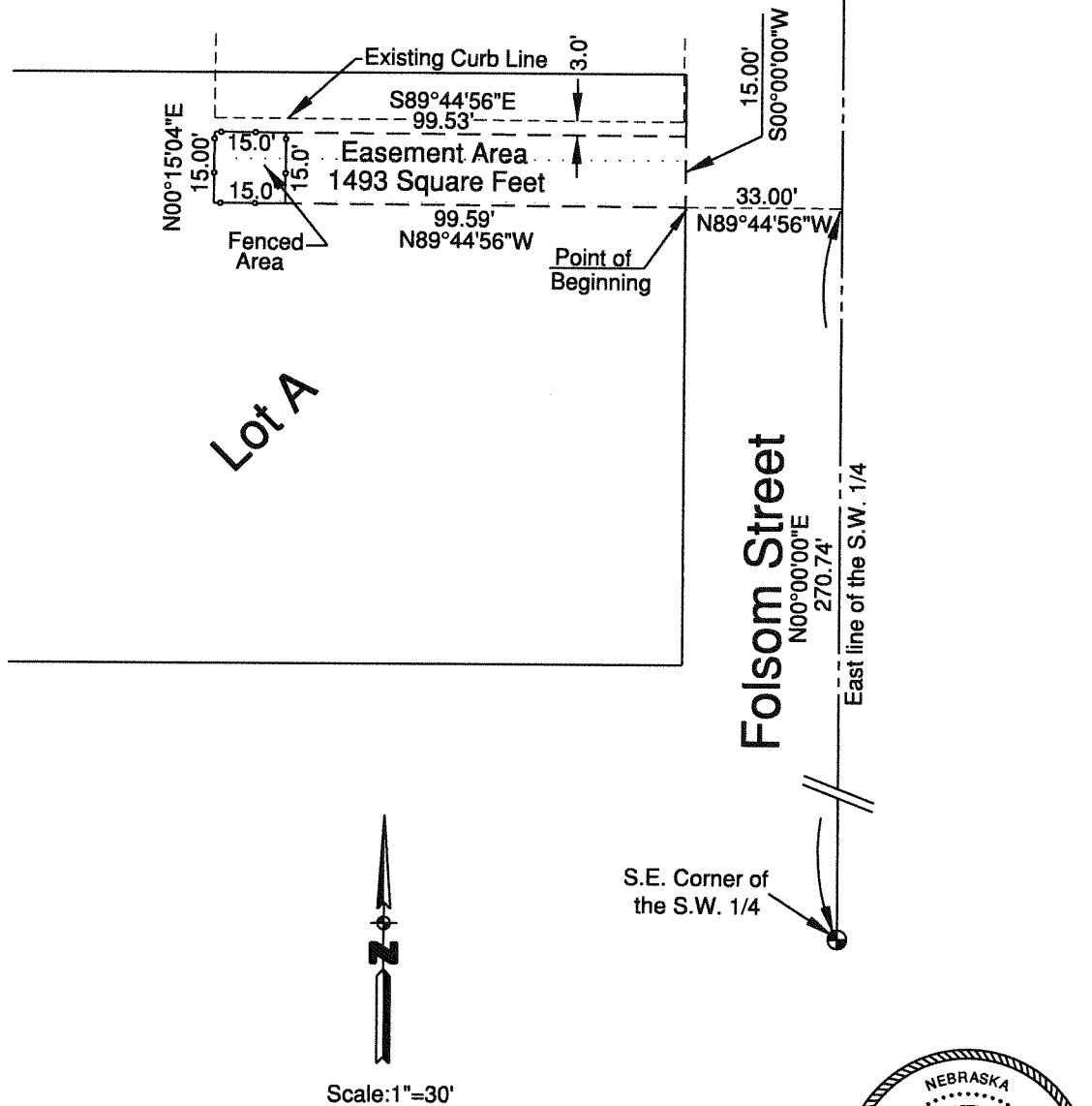
Phone (402) 434-2686
Fax (402) 434-2687

Survey of a 15.00 foot wide utility easement located in a part of Lot A in Block 7, Ricketts Consolidation of Lots in Block 7, Highland Park, located in the S.W. 1/4 of Section 27 T. 10 N., R. 6 East of the 6th P.M.

Job No. 37376

Sheet 1 of 2

July 13th, 2010



S.E. Corner of the S.W. 1/4



o= Set N.A.

SURVEYORS CERTIFICATE

I hereby certify that I have accurately surveyed the property in the above plat. Iron were set at points marked o. All dimensions are in feet and decimals of a foot.

●= Monuments Found as shown

Signed this 14th day of July, 2010

NAME Dennis D. Simonds
DENNIS D. SIMONDS

Surveyor's License # 343
Nebraska L.S.

A part of Lot A in Block 7, Ricketts Consolidation of Lots in Block 7, Highland Park, located in the S.W. 1/4 of Section 27, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Referring to the Southeast Corner of the Southwest Quarter of said Section 17; thence in a Northerly direction on the East line of the Southwest Quarter of said Section 27 and on an assumed bearing of North 00°00'00" East for a distance of 270.74 feet.

THENCE North 89°44'56" West for a distance of 33.00 feet to the POINT OF BEGINNING.

THENCE continuing in a Westerly direction on the last described course for a distance of 99.59 feet.

THENCE North 00°15'04" East for a distance of 15.00 feet.

THENCE South 89°44'56" East for a distance of 99.53 feet to a point 33.00 feet West of the East line of the Southwest Quarter of said Section 27.

THENCE South 00°00'00" West on a line 33.00 feet West of and parallel to the East line of the Southwest Quarter of said Section 27 for a distance of 15.00 feet to the POINT OF BEGINNING and containing a calculated area of 1493 Square Feet more or less.